

110TH CONGRESS
2D SESSION

H. R. 6356

To reform the collection and distribution of universal service support under the Communications Act of 1934.

IN THE HOUSE OF REPRESENTATIVES

JUNE 24, 2008

Mr. BARTON of Texas (for himself and Mr. STEARNS) introduced the following bill; which was referred to the Committee on Energy and Commerce

A BILL

To reform the collection and distribution of universal service support under the Communications Act of 1934.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Universal Service Re-
5 form, Accountability, and Efficiency Act of 2008”.

1 **SEC. 2. UNIVERSAL SERVICE PRINCIPLES, SUPPORTED**
2 **SERVICES, CONTRIBUTION MECHANISM, AND**
3 **SUPPORT.**

4 (a) IN GENERAL.—Section 254 of the Communica-
5 tions Act of 1934 (47 U.S.C. 254) is amended by striking
6 subsections (b) through (e) and inserting the following:

7 “(b) UNIVERSAL SERVICE PRINCIPLES.—The Com-
8 mission and the Joint Board shall base policies to advance
9 the goal of universal service while reforming the universal
10 service support and contribution mechanisms on all of the
11 following principles:

12 “(1) AFFORDABILITY.—Voice communications
13 service shall be available to low-income households
14 and households in high cost areas at rates that are
15 affordable to such households.

16 “(2) EFFICIENCY.—Universal service support
17 and contribution mechanisms for the provision of
18 services described in subsection (c) shall impose the
19 lowest possible costs on telecommunications service
20 subscribers and users.

21 “(3) CONTRIBUTION AND DISTRIBUTION RE-
22 QUIREMENTS.—Neither the provision of universal
23 service support nor the contribution mechanisms for
24 the provision of universal service shall favor any par-
25 ticular provider of voice communications service or

1 any particular technology used to provide voice com-
2 munications service.

3 “(4) TRANSPARENCY.—The rules governing
4 both the provision of and contribution to universal
5 service support shall—

6 “(A) be clear and enforceable; and

7 “(B) clearly define, and require the annual
8 measurement of, the goals and outcomes of uni-
9 versal service, including the performance meas-
10 ures developed under section 4 of the Universal
11 Service Reform, Accountability, and Efficiency
12 Act of 2008.

13 “(5) CONSUMER FOCUSED.—The paramount
14 goal of the universal service program shall be to sup-
15 port the availability of affordable voice communica-
16 tions service for consumers in low-income households
17 and households in high cost areas throughout the
18 United States, rather than to provide financial sup-
19 port to any new or existing carrier, service provider,
20 or vendor.

21 “(6) ACCESS TO ADVANCED TELECOMMUNI-
22 CATIONS SERVICES FOR SCHOOLS, LIBRARIES, AND
23 RURAL HEALTH CARE PROVIDERS.—Elementary and
24 secondary schools, libraries, and rural health care
25 providers should have access to advanced tele-

1 communications and information services as de-
2 scribed in subsection (h).

3 “(c) DEFINITION OF SERVICES SUPPORTED.—

4 “(1) VOICE COMMUNICATIONS SERVICE SUP-
5 PORT.—

6 “(A) IN GENERAL.—Except as provided in
7 paragraph (2), universal service support is to be
8 used solely to provide voice communications
9 service to consumers in households in high cost
10 areas throughout the United States and to con-
11 sumers in low-income households.

12 “(B) DEFINITIONS.—For purposes of this
13 section, the following definitions apply:

14 “(i) HIGH COST AREA.—The Commis-
15 sion shall define the meaning of the term
16 ‘high cost area’.

17 “(ii) VOICE COMMUNICATIONS SERV-
18 ICE.—The term ‘voice communications
19 service’ includes any service using any
20 technology that provides real-time inter-
21 active communications by voice utilizing
22 the public switched telephone network, in-
23 cluding IP-enabled voice service.

24 “(iii) IP-ENABLED VOICE SERVICE.—
25 The term IP-enabled voice service means

1 the provision of real-time voice communica-
2 tions offered to the public, or such classes
3 of users as to be effectively available to the
4 public, transmitted through customer
5 premises equipment using Internet pro-
6 tocol, or a successor protocol, with inter-
7 connection capability such that the service
8 can originate traffic to, or terminate traffic
9 from, the public switched telephone net-
10 work.

11 “(2) SPECIAL SERVICES.—In addition to the
12 services supported under paragraph (1), the Com-
13 mission may designate additional services to receive
14 universal service support for use by schools, librar-
15 ies, and health care providers in accordance with
16 subsection (h).

17 “(d) CONTRIBUTIONS.—

18 “(1) BASIS FOR CONTRIBUTIONS.—In estab-
19 lishing under the principles set forth in subsection
20 (b) the contribution mechanism for the support of
21 universal service, the Commission shall evaluate its
22 current contribution mechanism and consider alter-
23 native mechanisms. The Commission shall have the
24 authority to select any contribution mechanism that

1 is consistent with the principles set forth in sub-
2 section (b), but such mechanism—

3 “(A) shall be based exclusively upon the
4 provision of voice communications service;

5 “(B) shall not assess broadband trans-
6 mission or internet access services; and

7 “(C) shall include an exemption from uni-
8 versal service contributions for low-income
9 households.

10 “(2) CAP ON CONTRIBUTIONS.—In establishing
11 under the principles set forth in subsection (b) the
12 level for the contribution for the support of universal
13 service, the Commission shall require that the total
14 amount of universal service support for all universal
15 service support mechanisms shall not exceed the
16 total amount that was collected from all sources for
17 all universal service support mechanisms in the last
18 year prior to the date of enactment of the Universal
19 Service Reform, Accountability, and Efficiency Act
20 of 2008 and shall decline over time.

21 “(3) ANTI-DEFICIENCY ACT COMPLIANCE.—

22 “(A) IN GENERAL.—In designing the con-
23 tribution mechanism for the support of uni-
24 versal service, the Commission shall take such
25 steps as are necessary to reform such contribu-

tion mechanism so that compliance with the requirements of section 3679 of the Revised Statutes (31 U.S.C. 1341; commonly known as the Anti-Deficiency Act) will not cause a disruption in the administration of universal service support.

“(B) REPORT TO CONGRESSIONAL COMMITTEES.—The Commission shall determine the earliest time that complying with such section will not cause a disruption in the administration of universal service support, and the Commission shall report that determination promptly to the Committee on Energy and Commerce of the House of Representatives and the Committee on Commerce, Science, and Transportation of the Senate.

“(e) UNIVERSAL SERVICE SUPPORT.—

“(1) IN GENERAL.—

“(A) After the date specified in subparagraph (B), only an eligible telecommunications provider designated under section 214(e), as such section is amended by the Universal Service Reform, Accountability, and Efficiency Act of 2008, shall be eligible to receive specific Federal universal service support for the provision

1 of voice communications service in high cost
2 areas.

3 “(B) The date specified in this subpara-
4 graph is the date on which the first set of auc-
5 tions required under subsection (m) is com-
6 pleted.

7 “(2) EXCEPTION TO UNIVERSAL SERVICE SUP-
8 PORT.—The Commission shall develop a mechanism
9 to prohibit the receipt of universal service support
10 for the provision of voice communications services to
11 consumers in households in high cost areas where
12 the Commission determines, based on publicly avail-
13 able information, that a service area has a substan-
14 tially high percentage of households with income at
15 or above the 95th percentile of national household
16 income levels or develops an equivalent measure-
17 ment.”.

18 (b) IMPLEMENTATION OF REFORM MEASURES.—Sec-
19 tion 254(a) of such Act (47 U.S.C. 254(a)) is amended
20 by adding at the end the following new paragraph:

21 “(3) PROCEDURES TO REFORM UNIVERSAL
22 SERVICE SUPPORT SYSTEM.—Notwithstanding para-
23 graphs (1) and (2), within 9 months after the date
24 of enactment of the Universal Service Reform, Ac-
25 countability, and Efficiency Act of 2008, the Com-

1 mission shall implement reform of the universal
2 service system in accordance with this section, as
3 amended by such Act, and section 4 of such Act.
4 The Federal-State Joint Board may submit com-
5 ments in any proceeding carried out by the Commis-
6 sion pursuant to this section.”.

7 (c) STATE UNIVERSAL SERVICE PROGRAMS NOT
8 PREEMPTED.—

9 (1) IN GENERAL.—Nothing in this Act, or in
10 any of the amendments made by this Act, shall pre-
11 empt or be construed to preempt any State from
12 adopting laws, rules, or regulations to ensure that
13 voice communications service, as defined by section
14 254(c)(1)(B)(ii) of the Communications Act of 1934
15 (as amended by subsection (a) of this Act), are uni-
16 versally available to all low-income households and
17 households in high cost areas at affordable rates, so
18 long as such laws, rules, or regulations are con-
19 sistent with, and not in violation of, the principles
20 established under the applicable provisions of this
21 Act and the amendments made by this Act.

22 (2) STATES ARE PREEMPTED FROM ASSESSING
23 INTERSTATE SERVICES.—Notwithstanding para-
24 graph (1), a State may not assess interstate serv-
25 ices, including interstate telecommunications serv-

1 ices, information services, or voice communications
2 services, in order to fund a State’s universal service
3 program.

4 **SEC. 3. DISTRIBUTION MECHANISM REFORM FOR HIGH**
5 **COST SUPPORT.**

6 (a) IN GENERAL.—Section 254 of the Communica-
7 tions Act of 1934 (47 U.S.C. 254) is further amended by
8 adding at the end the following:

9 “(m) DISTRIBUTION MECHANISM FOR HIGH COST
10 SUPPORT.—

11 “(1) ESTABLISHMENT OF REVERSE AUCTION
12 DESIGN.—

13 “(A) IN GENERAL.—Not later than 9
14 months after the date of enactment of the Uni-
15 versal Service Reform, Accountability, and Effi-
16 ciency Act of 2008, the Commission shall de-
17 velop, and shall promulgate regulations to im-
18 plement, a reverse auction plan to be used to
19 distribute universal service support for voice
20 communications service in high cost areas, in
21 which each auction winner shall have the privi-
22 leges and obligations of a provider-of-last-re-
23 sort, as determined by the Commission.

24 “(B) AUCTION DESIGN PARAMETERS.—In
25 carrying out the requirements of subparagraph

1 (A), the Commission shall ensure that the auc-
2 tion design provides for—

3 “(i) the provision of quality voice com-
4 munications service, as defined by the
5 Commission by regulation prescribed after
6 the date of enactment of the Universal
7 Service Reform, Accountability, and Effi-
8 ciency Act of 2008, consistent with clause
9 (iv);

10 “(ii) cost-constraining benefits;

11 “(iii) competitive neutrality;

12 “(iv) technological neutrality;

13 “(v) incentives for providers of voice
14 communications service to become more ef-
15 ficient;

16 “(vi) conducting the auctions at ap-
17 propriately gauged intervals that take into
18 account new information about changes in
19 the marketplace, so that universal service
20 support based on current technology does
21 not become a barrier to entry for service
22 providers using new technologies;

23 “(vii) in the first set of auctions,
24 which shall be conducted not later than 15
25 months after the date of enactment of the

1 Universal Service Reform, Accountability,
2 and Efficiency Act of 2008, reserve prices
3 that, in the aggregate, do not exceed the
4 total amount of support for high cost areas
5 provided in the year prior to the date of
6 enactment of the Universal Service Re-
7 form, Accountability, and Efficiency Act of
8 2008 and which take into account that
9 support shall not be provided to more than
10 one entity per area;

11 “(viii) reserve prices for succeeding
12 auctions (to be carried out periodically at
13 the discretion of the Commission) that, in
14 each service area, are no greater than the
15 winning bid in the previous auction for
16 each such service area; and

17 “(ix) avoiding, to the greatest extent
18 practicable, conducting auctions in which
19 only 1 firm participates.

20 “(C) ESTABLISHING RESERVE PRICES.—In
21 any high cost area in which support is provided
22 by a subsidy that is determined pursuant to
23 this paragraph, the Commission—

24 “(i) shall ensure that the reserve price
25 of the auction only takes into account the

1 difference in the cost of providing voice
2 communications service in a high cost area
3 compared to a non-high cost area;

4 “(ii) shall take any action necessary
5 to remove excessive support pursuant to
6 the principle established in subsection
7 (b)(2);

8 “(iii) shall only consider costs directly
9 related to the provision of voice commu-
10 nications service; and

11 “(iv) shall not consider the costs asso-
12 ciated with any of the following:

13 “(I) Artwork.

14 “(II) Cafeterias, lunch rooms,
15 and vending facilities.

16 “(III) Patent rights.

17 “(IV) Government franchises.

18 “(V) Charitable contributions.

19 “(VI) Penalties or fines for viola-
20 tions of statutes.

21 “(VII) Membership fees and dues
22 in social, political, service, rec-
23 reational, or athletic clubs or organi-
24 zations.

1 “(VIII) Lobbying or public rela-
2 tions.

3 “(IX) Performing personnel ad-
4 ministration activities.

5 “(X) Legal services.

6 “(XI) Janitorial service, cleaning
7 supplies, or guard service.

8 “(XII) Sewage or water utilities
9 or services.

10 “(D) SERVICE AREAS.—

11 “(i) IN GENERAL.—In carrying out
12 the requirements of subparagraph (A), the
13 Commission, within 9 months after the
14 date of enactment of the Universal Service
15 Reform, Accountability, and Efficiency Act
16 of 2008, shall define service areas at the
17 smallest geographic level practicable based
18 on a new study, conducted at the smallest
19 geographic level practicable, of those high
20 cost areas throughout the United States
21 that require universal service support to
22 comply with the principles of universal
23 service in subsection (b). The Commission
24 shall not define service areas based on
25 study areas in existence as of the date of

1 enactment of the Universal Service Re-
2 form, Accountability, and Efficiency Act of
3 2008.

4 “(ii) SUBSEQUENT AUCTIONS.—

5 “(I) RE-EVALUATION OF NEED
6 FOR UNIVERSAL SERVICE SUPPORT.—

7 In advance of each subsequent auction
8 of a service area, the Commission
9 shall evaluate whether such service
10 area still meets the criteria under
11 clause (i) to determine whether uni-
12 versal service support should be pro-
13 vided.

14 “(II) PROHIBITION.—The Com-
15 mission shall not provide support in a
16 subsequent auction to a service area
17 in which, in the absence of a sub-
18 sidized provider-of-last-resort, con-
19 sumers would have access to afford-
20 able voice communications service by
21 1 or more unsubsidized providers.

22 “(III) VOUCHERS.—The Com-
23 mission shall have the authority to
24 issue vouchers to consumers if needed

1 to complete the transition away from
2 subsidizing a provider-of-last-resort.

3 “(E) CHARACTERISTICS OF AUCTIONED
4 AUTHORITY.—

5 “(i) IN GENERAL.—Before conducting
6 each auction, the Commission shall pre-
7 scribe the obligations and privileges of the
8 winner of each auction as the provider-of-
9 last-resort for each service area (defined
10 pursuant to paragraph (1)(D)(i)). In pre-
11 scribing such obligations and privileges,
12 the Commission shall describe the min-
13 imum quality of voice communications
14 service to be provided (as defined by the
15 Commission pursuant to paragraph
16 (1)(B)(i)) and shall take into consideration
17 the principles of universal service in sub-
18 section (b).

19 “(ii) BONDING REQUIREMENT.—The
20 Commission shall require all auction win-
21 ners to be bonded (or to provide other as-
22 surance as deemed appropriate by the
23 Commission) prior to being designated as
24 the eligible telecommunications provider
25 for a service area to ensure that such pro-

vider complies with the obligations established under clause (i) for the period covered by the auction.

“(iii) STATE PREEMPTION.—Any eligible telecommunications carrier that is designated as the carrier-of-last-resort by a State and that does not win an auction for a service area shall be released from all obligations imposed as a carrier-of-last-resort by such State.

“(2) DUPLICATE SUBSIDIES PROHIBITED.—The Commission shall designate only 1 eligible telecommunications provider per service area to receive universal service support for providing the services described in subsection (c)(1).”.

(b) CONFORMING AMENDMENTS.—

(1) ELIGIBLE TELECOMMUNICATIONS PROVIDERS.—

(A) IN GENERAL.—Section 214 of the Communications Act of 1934 (47 U.S.C. 214(e)) is amended by striking subsection (e) and inserting the following new subsection:

“(e) UNIVERSAL SERVICE SUPPORT VIA ELIGIBLE TELECOMMUNICATIONS PROVIDERS.—The Commission shall deem the winner of an auction under section

1 254(m)(1)(A) as the eligible telecommunications provider
 2 for a service area, defined in accordance with section
 3 254(m)(1)(C). Such provider shall, throughout the service
 4 area for which the designation is received—

5 “(1) offer the voice communications service that
 6 is supported by Federal universal service support
 7 mechanisms under section 254(c)(1), either using its
 8 own facilities or a combination of its own facilities
 9 and resale of another provider’s services;

10 “(2) meet or exceed the service quality stand-
 11 ards developed by the Commission pursuant to sec-
 12 tion 254(m)(1)(E); and

13 “(3) advertise the availability of such service
 14 and the charges therefor using media of general dis-
 15 tribution.”.

16 (B) EFFECTIVE DATE.—The amendment
 17 made by subparagraph (A) shall take effect 15
 18 months after the date of enactment of this Act.

19 (2) RURAL TELEPHONE EXEMPTION CON-
 20 FORMING AMENDMENT.—Section 251(f)(1)(A) of the
 21 Communications Act of 1934 (47 U.S.C.
 22 251(f)(1)(A)) is amended by striking “section 254”
 23 and all that follows and inserting “section 254.”

24 (3) ADDITIONAL CONFORMING AMENDMENT.—
 25 Section 254(h)(1)(B) of such Act (47 U.S.C.

1 254(h)(1)(B)) is amended by striking “subsection
2 (c)(3)” and inserting “subsection (c)(2)”.

3 **SEC. 4. ACCOUNTABILITY.**

4 (a) IN GENERAL.—The Federal Communications
5 Commission (in this Act referred to as the “Commission”)
6 shall take such steps as are necessary to make the reforms
7 described in this section.

8 (b) FEDERAL-STATE JOINT BOARD ON UNIVERSAL
9 SERVICE REFORM.—

10 (1) ECONOMIC ANALYSIS REQUIRED.—Not later
11 than 180 days after the date of enactment of this
12 Act, the Commission shall require that the Federal-
13 State Joint Board on Universal Service (in this Act
14 referred to as the “Joint Board”) include an eco-
15 nomic analysis in all of its decisions and rec-
16 ommendations that explains how such decisions and
17 recommendations comply with the principles in sec-
18 tion 254(b) of the Communications Act of 1934, as
19 amended by this Act.

20 (2) DIVESTITURE OF FINANCIAL INTERESTS
21 BEFORE SERVING.—Not later than 60 days after the
22 date of enactment of this Act and within 60 days
23 after the appointment of each new member of the
24 Joint Board, the Commission shall review any finan-
25 cial interests of any member of the Joint Board and

1 shall take necessary actions to eliminate any con-
2 flicts of interest.

3 (c) UNIVERSAL SERVICE ADMINISTRATOR'S BOARD
4 OF DIRECTORS.—

5 (1) NEW REQUIREMENTS FOR SERVICE.—The
6 Commission shall reconstitute the board of directors
7 of the Commission's designated administrator of the
8 universal service fund to ensure that all board mem-
9 bers have professional training and expertise in pub-
10 lic administration and no financial interest or affili-
11 ation with any organization or company that may re-
12 ceive universal service support.

13 (2) ADVISORY BOARD.—The Commission, at its
14 discretion, may establish a non-voting advisory board
15 that includes individuals who do not meet the re-
16 quirements of paragraph (1).

17 (d) PERFORMANCE MEASURES.—

18 (1) IN GENERAL.—The Commission shall de-
19 sign and implement performance measures, which
20 shall include specific goals, outcome measures, and
21 efficiency measures, to determine whether the goals
22 of advancing universal service are being achieved in
23 an economically efficient way.

24 (2) PRINCIPLES.—In developing performance
25 measures under paragraph (1), the Commission shall

1 consider independent research on the consequences
2 and effectiveness of universal service programs. The
3 following principles shall govern the development of
4 these performance measures:

5 (A) Outcome measures shall reflect both
6 proposed progress and actual benefits to the
7 public produced by universal service support.

8 (B) Efficiency measures shall identify the
9 cost per unit of a successful outcome, rather
10 than the cost per unit of output.

11 (C) The relevant measure of costs shall in-
12 clude the full economic effect, including any
13 economic inefficiencies, of the universal service
14 program's expenditures.

15 (3) MINIMUM REQUIREMENTS FOR PERFORM-
16 ANCE MEASURES.—

17 (A) HIGH COST AREAS AND LOW INCOME
18 PROGRAM.—In order to ensure the existence of
19 an affordably priced service option for voice
20 communications service for consumers in high
21 cost areas and consumers in low-income house-
22 holds, the Commission shall monitor avail-
23 ability, price, and subscription rates for such
24 consumers. The Commission shall measure, per
25 million dollars spent, the change in penetration

1 rate or number of subscribers and the avail-
2 ability of voice communications service.

3 (B) SCHOOLS AND LIBRARIES.—In order
4 to ensure that the program carried out under
5 section 254(h)(1)(B) of the Communications
6 Act of 1934 (47 U.S.C. 254(h)(1)(B)) has led
7 to an increase in access to the Internet by
8 schools and libraries and that improved edu-
9 cational outcomes are directly attributable to
10 such increased access, the Commission shall
11 measure, per million dollars spent, the improve-
12 ment in educational outcomes attributable to in-
13 creased Internet access.

14 (C) RURAL HEALTH.—In order to ensure
15 that increased access to advanced services by
16 rural health care providers under section
17 254(h)(1)(A) of the Communications Act of
18 1934 (47 U.S.C. 254(h)(1)(A)) has directly
19 contributed to improved health outcomes and
20 the reduced cost of maintaining a healthy popu-
21 lation, the Commission—

22 (i) shall ascertain the extent to which
23 universal service support increases the use
24 of various communications services by
25 health care providers serving rural areas,

1 compared to such use in the absence of
2 universal service support; and

3 (ii) shall measure, per million dollars
4 spent, whether, and by how much, the in-
5 creased use of various communications
6 services has improved health outcomes or
7 reduced health care costs.

8 (e) REPORT TO CONGRESS.—The Commission shall
9 publish annually a report on whether, and to what extent,
10 the goals of advancing universal service are being achieved
11 in an economically efficient way, including an analysis of
12 the performance measures implemented.

13 (f) ANNUAL REPORT REQUIREMENT.—The Commis-
14 sion shall require each eligible telecommunications pro-
15 vider, school, library, and rural health care provider who
16 received universal service support in the previous fiscal
17 year to file an annual report with the Commission about
18 how such support funds were used during such year.

19 (g) AUDITS.—The Commission shall strengthen the
20 oversight structure of the universal service program and
21 shall provide the Commission’s Inspector General with ap-
22 propriate resources to conduct regular and thorough au-
23 dits and investigations.

24 (h) PENALTIES.—The Commission shall permanently
25 bar anyone who commits fraud related to the universal

1 service program from receiving any future universal serv-
2 ice support subsidies. The Commission shall also develop
3 increased penalties for wrongdoing associated with the
4 universal service fund.

○